

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0409**

County of Cottonwood,
Petitioner,

Debbie Denise Koch, petitioner,
Appellant,

vs.

Joseph Zachary Zoellner,
Respondent.

**Filed December 9, 2024
Affirmed
Frisch, Judge**

Cottonwood County District Court
File No. 17-FA-17-219

Jacob M. Birkholz, Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota
(for appellant)

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(for respondent)

Considered and decided by Reyes, Presiding Judge; Frisch, Judge; and
Florey, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant-mother challenges the district court's order denying her motion to modify her court-ordered parenting time with her two children. Mother argues that the district court abused its discretion because its findings support modification of the parenting-time schedule and modification is in the best interests of the children. Because we discern no abuse of discretion in the district court's decision to maintain the existing parenting-time schedule, we affirm.

FACTS

Appellant-mother Debbie Denise Koch and respondent-father Joseph Zachary Zoellner have two joint children. Prior to 2019, the parties shared joint legal and joint physical custody of the children, and father had 43% of parenting time and mother had 57% of parenting time.

On January 8, 2019, child-protection services removed the children from mother's care and placed them in father's care because mother failed a drug test. Father subsequently requested that the district court modify physical custody and the parenting-time schedule. He sought temporary sole physical custody of the children and requested that mother receive supervised parenting time subject to certain conditions, including maintaining her sobriety. Mother opposed the motion. In December 2019, pursuant to the parties' stipulation, the district court modified custody and parenting time by awarding father sole physical custody of the children and reducing mother's parenting time to 31%. The district court granted mother unsupervised parenting time conditioned on her continued sobriety.

The district court did not alter the parties' joint legal custody of the children. Shortly thereafter, mother achieved, and has since maintained, her sobriety.

Since the 2019 custody and parenting-time modification, both parties have re-married. In 2021, father married T.Z., who regularly assists with parenting time and supervision of the children. And in August 2023, mother married K.L., who also regularly assists with parenting time and supervision. K.L. had multiple domestic-assault-related convictions between 2011 and 2019.

In October 2023, mother moved the district court to modify the parenting-time schedule to allow for equal parenting time between the parties. Mother argued that modification was in the children's best interests because, among other reasons, she has achieved and maintained sobriety, she has successfully completed treatment for alcohol and controlled-substance abuse, she has been consistent with her existing parenting-time obligations, she has an "excellent" relationship with the children, modification would benefit her relationship with the children, she had been the primary caregiver for most of the children's lives, and she has cooperated with father in co-parenting the children.

Following a hearing, the district court denied mother's motion, concluding in pertinent part that modification of the schedule was not in the best interests of the children; the children are "thriving under the current schedule"; the children are "happy, healthy, and feel safe"; the parties have been effectively co-parenting under the existing schedule; and the current schedule provides consistency and "generous parenting time to both parents."

Mother appeals.

DECISION

Mother argues that the district court abused its discretion by denying her request to modify the parenting-time schedule because she asserts that modification is in the children's best interests. She argues that the district court did not properly consider her evidence in support of her request to modify the existing schedule, that the district court's findings support modification, and that the district court otherwise abused its discretion in analyzing whether modification was in the children's best interests.

We limit our review of a district court's decision regarding parenting time to whether the district court abused its discretion. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). "Appellate courts recognize that a district court has broad discretion to decide parenting-time questions and will not reverse a parenting-time decision unless the district court abused its discretion by misapplying the law or by relying on findings of fact that are not supported by the record." *Suleski v. Rupe*, 855 N.W.2d 330, 334 (Minn. App. 2014) (citations omitted); *see also Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) ("A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." (quotation omitted)). We review a district court's findings of fact "for clear error . . . reversing only if we are left with the definite and firm conviction that a mistake has been made." *Thorton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (quotations omitted). And if "the record reasonably supports the findings, . . . it is immaterial that the record might also provide a reasonable basis for inferences and findings

to the contrary.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021) (quotation omitted).

So long as a modification of parenting time does not change a child’s primary residence, a district court “shall” modify parenting time “[i]f modification would serve the best interests of the child.” Minn. Stat. § 518.175, subd. 5(b) (2022). In determining whether modification would serve a child’s best interests, a district court considers 12 factors:

- (1) a child’s physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child’s needs and development;

- (2) any special medical, mental health, developmental disability, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;

- (3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;

- (4) whether domestic abuse . . . has occurred in the parents’ or either parent’s household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child’s safety, well-being, and developmental needs;

- (5) any physical, mental, or chemical health issue of a parent that affects the child’s safety or developmental needs;

- (6) the history and nature of each parent’s participation in providing care for the child;

- (7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child’s ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;

- (8) the effect on the child’s well-being and development of changes to home, school, and community;

- (9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child’s life;

(10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;

(11) except in cases in which domestic abuse . . . has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and

(12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

Minn. Stat. § 518.17, subd. 1(a) (2022). A district court “must make detailed findings on each of the factors . . . based on the evidence presented and explain how each factor led to its conclusions and to the determination of . . . parenting time.” Minn. Stat. § 518.17, subd. 1(b)(1) (2022). A “[district] court may not use one factor to the exclusion of all others, and the [district] court shall consider that the factors may be interrelated.” *Id.* In evaluating these factors, “the district court’s foremost consideration is the best interests of the child.” *Thornton*, 933 N.W.2d at 792.

We address each of mother’s challenges in turn.

I. The district court did not abuse its discretion in determining that the existing parenting-time schedule met the children’s needs.

Mother argues that the district court abused its discretion in determining that the children’s physical, spiritual, cultural, emotional, and other needs did not support modifying the parenting-time schedule. She asserts that the district court erred in considering the children’s educational needs, did not “directly address” the relevant needs

of the children with “specificity,” and the district court’s findings were otherwise “woefully inadequate.” We disagree.

In its best-interests determination, a district court must consider and evaluate a “child’s physical, emotional, cultural, spiritual, *and other* needs, and the effect of the proposed arrangements on the child’s needs and development.” Minn. Stat. § 518.17, subd. 1(a)(1) (emphasis added). The district court found that the children’s physical, emotional, spiritual, and other needs were met by the existing schedule. In making this finding, the district court referenced evidence showing the environment in father’s home affords the children a more productive atmosphere to complete schoolwork, that mother’s home is not as conducive to the completion of schoolwork because the children are at times tired or distracted in that environment, and that the children have an established routine in father’s home. These findings are supported by the record. Although mother presented contrary evidence, we discern no abuse of discretion in how the district court weighed conflicting evidence where the record reasonably supports its findings. *See Kenney*, 963 N.W.2d at 223 (explaining that we will not set aside a district court’s findings of fact unless they are “manifestly contrary to the weight of the evidence”).

Mother argues that the statute does not expressly provide that the district court may consider the children’s educational needs in determining the best interests of the children. But the statute sets forth a nonexclusive list of considerations and expressly affords a district court discretion to consider “other needs” of the children in determining their best interests. Minn. Stat. § 518.17, subd. 1(a)(1). And mother cites no authority that requires a district court to make specific and separate findings as to each of the emotional, spiritual,

cultural, and physical needs of the children. Because the district court properly applied the law and its factual findings are supported by the record, we discern no abuse of discretion.

II. The district court properly considered mother’s husband’s history of domestic abuse in its determination not to modify parenting time.

Mother argues that the district court misapplied the law because it considered her husband’s history of domestic violence in its determination that modification of the parenting-time schedule was not in the best interests of the children. In determining the best interests of the children, the district court evaluated “whether domestic abuse . . . ha[d] occurred in the parents’ or either parent’s household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child’s safety, well-being, and developmental needs.” Minn. Stat. § 518.17, subd. 1(a)(4).

Here, the district court found that there had been no domestic violence between mother and father or in either household but that mother’s husband, K.L., has a history of domestic abuse including a recent felony domestic-assault conviction for which he was on probation at the time of the modification proceeding. Assuming without deciding that mother’s husband’s recent history of domestic abuse does not fall squarely within the subdivision 1(a)(4) best-interests consideration, these facts are nevertheless relevant to the best interests of the children. *See* Minn. Stat. § 518.17, subd. 1(a)(9) (considering the proposed arrangements between the child and other significant persons in the child’s life). Indeed, the district court considered these facts because K.L. often cared for the children while mother was working. We note that mother does not contest the accuracy of these findings. And mother cites no Minnesota authority prohibiting a district court in its overall

evaluation of the best interests of the children from considering the history of domestic abuse by a resident of mother's household who cares for the children. *Cf. Simonson v. Simonson*, 292 N.W.2d 12, 13 (Minn. 1980) (determining that the district court could not disregard mother's husband's history of sexually molesting children in custody determination). That the district court may have considered mother's husband's history of domestic abuse in the context of subdivision 1(a)(4) as opposed to another statutory best-interests factor was therefore harmless. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand a custody-modification determination for further findings when "on remand the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result); Minn. R. Civ. P. 61 (requiring courts to ignore harmless error). Because the supreme court has allowed the district court to consider this type of history in determining that it was not in the best interests of the children to modify custody, we discern no abuse of discretion in the district court's determination that K.L.'s history of domestic abuse weighed against modification of the parenting-time order. *See Thornton*, 933 N.W.2d at 790 (discussing Minn. Stat. § 518.17, subd. 1 (2018), and noting that "a district court needs great leeway in making a custody decision that serves a child's best interests, in light of each child's unique family circumstance"); *cf.* Minn. Stat. § 518.003, subd. 3(f) (2022) (noting that a "custody determination" includes a ruling regarding parenting time).

III. The district court did not abuse its discretion in determining that the history and nature of each parent’s participation in caring for the children did not weigh in favor of modifying the parenting-time schedule.

Mother asks us to conclude that the district court did not give due consideration to her evidence that shows her consistent and positive involvement with the children. A district court must evaluate and consider “the history and nature of each parent’s participation in providing care for the child.” Minn. Stat. § 518.17, subd. 1(a)(6). The district court determined that modification of the parenting-time order was unwarranted because father has “excelled” at “providing a stable home and predictable daily routine” for the children during the five years that he served as the children’s primary caregiver. We decline to disturb the district court’s determination because the district court’s factual determination is supported by the record, and mother does not identify an abuse of discretion associated with the district court’s determination.

Mother does not argue that the district court’s findings are unsupported by the record or that the district court misapplied the law. *See Suleski*, 855 N.W.2d at 334 (“Appellate courts . . . will not reverse a parenting-time decision unless the district court abused its discretion by misapplying the law or by relying on findings of fact that are not supported by the record.” (citation omitted)). She instead asks us to substitute our judgment for that of the district court and afford her evidence greater weight—an action we do not undertake on appeal. *See Kenney*, 963 N.W.2d at 223 (“[T]he role of an appellate court is not to weigh, reweigh, or inherently reweigh the evidence when applying a clear-error review.”).

IV. The district court did not otherwise abuse its discretion in declining to modify the parenting-time schedule.

Mother summarily argues that the district court abused its discretion in declining to modify the parenting-time schedule to the extent it based its determination of the children's best interests on improper considerations. Mother specifically faults the district court for speculating about mother's living arrangements, declining to recognize that maximizing parenting time means equal parenting time, and determining that the parties' co-parenting and willingness and ability to care for the children are neutral factors in the best-interests analysis. In making these arguments, mother does not identify any error of law or factual finding unsupported by the record.¹ And in balancing these and the relevant best-interests factors, the district court found that the children were "thriving" under the current parenting-time schedule, that maintaining consistency in the schedule was in the best interests of the children, that the current schedule afforded significant and continued opportunity for mother to foster positive relationships with the children, and that the current schedule was otherwise effective.

We are convinced from our review of the entire record that the district court thoroughly considered evidence related to the children's best interests and properly exercised its discretion in determining that no modification of the existing parenting-time

¹ To the extent that mother argues that the district court made unfair factual inferences about mother's living arrangements from averments in K.L.'s affidavit and the effect of those arrangements on the children, any such inferences are ultimately harmless because the district court concluded that this factor was neutral in its best-interests determination. Therefore, if any such error occurred, we consider it to be harmless. Minn. R. Civ. P. 61.

schedule was warranted.² We cannot reweigh the evidence presented to the district court when determining whether the district court abused its discretion. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Our responsibility is to correct errors, not to retry the case. *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 68 n.2 (Minn. 1979). And the law “leaves scant if any room for an appellate court to question the court’s balancing of the best-interests considerations.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

Finally, we agree with the district court that mother’s achievement and maintenance of sobriety is commendable and has positively impacted her relationship with the children and her co-parenting. And we too recognize, as the district court did, that mother desires to spend more time with the children. But we cannot say that the district court abused its discretion where, as here, it weighed the evidence presented and determined that the current schedule provides “generous parenting time” to both parents, consistency for the children, and the opportunity for both parents to “develop and sustain nurturing relationships” with the children, all of which are in the children’s best interests.

Affirmed.

² We note that mother challenges the district court’s findings regarding “any physical, mental, or chemical health issue of a parent that affects the child’s safety or developmental needs.” Minn. Stat. § 518.17, subd. 1(a)(5). But the district court concluded that this factor supported modification of the parenting-time schedule because mother had undertaken positive steps to achieve and maintain sobriety and we again decline to reweigh the best-interests factors.